

# Exhibit C

MULTI-DISTRICT LITIGATION

IN RE: GOLD KING MINE RELEASE IN SAN  
JUAN COUNTY, COLORADO, ON AUGUST 5,  
2015.

NO: 1:18-MD-02824-WJ

TELEPHONIC HEARING AND STATUS CONFERENCE PURSUANT TO  
RULE 16(c)(2)(F) and (L)  
June 26, 2020  
12:00 p.m.  
421 Gold, Southwest  
Albuquerque, New Mexico

BEFORE: HONORABLE ALAN C. TORGERSON, SPECIAL MASTER

REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69  
Bean & Associates, Inc.  
Professional Court Reporting Service  
201 Third Street, Northwest, Suite 1630  
Albuquerque, New Mexico 87102

(3812N) MAS

<p style="text-align: right;">Page 10</p> <p>1 originally drafted. It asks us purely to interpret  2 what a regulation is, that it's an OSHA reg that's  3 applicable to employers for protection of employees.  4 We raised the fact that this doesn't even  5 nominally try to incorporate facts. The law is very  6 clear that a request for admission can't just call  7 for a pure legal conclusion, so what they have done  8 now is they've inserted the words "applicable to  9 employers, quote, 'at the Gold King Mine in 2014 and  10 2015' for protection of their employees from hazards  11 associated with water accumulation."  12 So we may be able to -- you know, whether  13 that actually changes anything and actually means  14 that by nominally incorporating the words "Gold King  15 Mine" changes it from a pure legal conclusion to one  16 that asks for facts we're still analyzing and  17 considering. But we will get our response to them  18 by July 1.  19 SPECIAL MASTER TORGERSON: All right.  20 Well, it doesn't sound like you're going to be able  21 to resolve everything. So rather than pushing this  22 issue down the road, if you can't resolve all of the  23 issues with respect to what Mr. Bain has requested  24 we put on the agenda as items A and B by July 8 or  25 saying you can't by July 1, in either event, I want</p>	<p style="text-align: right;">Page 12</p> <p>1 documents in response to our request was the  2 New Mexico Environment Department, as they brought  3 their action on behalf of the New Mexico  4 Environmental Department, and that any other agency  5 or any other state entity not be compelled through  6 the litigation to provide documents, but they would  7 endeavor to reach, you know, memorandums of  8 understanding or voluntary agreements with these  9 other entities to get us documents.  10 And so that continues to be their  11 position. For example, recently we have sought to  12 get some data on studies that professors at  13 New Mexico universities have done as part of the  14 WRRI conference, and so we're trying to get those  15 voluntarily, because their position is that the  16 New Mexico Environmental Department is the only  17 party that can be compelled to respond to our  18 discovery. Well, we wanted to ask a request for  19 admission because that has consequences for who can  20 recover damages or who has standing to recover  21 damages, and so we asked very simple requests for  22 admission. For example, "Please admit that this  23 action is being brought on behalf of the New Mexico  24 Environmental Department." They denied it.  25 Another request for admission was:</p>
<p style="text-align: right;">Page 11</p> <p>1 the Government to file their motions by July 15th,  2 and the Sovereign Plaintiffs can respond according  3 to the applicable rules.  4 All right. Item C. New Mexico  5 Environment Department's failure to respond to  6 requests to admit that New Mexico Environment  7 Department is the only New Mexico government party  8 in this litigation and that the State of New Mexico  9 is not a party on its own behalf despite taking the  10 position that New Mexico Environment Department is  11 the only state agency that can be compelled to  12 respond to discovery requests in this litigation as  13 a party.  14 Now, I remember we had a discussion about  15 this some time ago, and apparently that's still an  16 issue in the Government's viewpoint. So who wants  17 to address this one, Mr. Bain?  18 MR. BAIN: I'll address it, Your Honor.  19 So who the party is for New Mexico in this  20 litigation has consequences both for discovery, as  21 to who is compelled to respond, but also has  22 consequences for standing to recover damages. And  23 you know, as you will recall, New Mexico took the  24 position in response to our discovery request that  25 the only party that could be compelled to produce</p>	<p style="text-align: right;">Page 13</p> <p>1 "New Mexico has not brought this action on its own  2 behalf." They deny that.  3 So they're trying to have it both ways.  4 They're trying to limit it to the New Mexico  5 Environmental Department for purposes of responding  6 to discovery, but for purposes of standing to  7 recover damages, they're trying to include the  8 entire state.  9 So this is -- you know, and they responded  10 to us, "Well, no, you said in the caption,  11 'New Mexico on behalf of the New Mexico  12 Environmental Department,'" and find that that meets  13 both entities. But they sued us in other  14 litigation, including the District of New Mexico,  15 and they clearly distinctively identify the State of  16 New Mexico and the New Mexico Environmental  17 Department, except for Plaintiffs in that  18 litigation. So for whatever reason, they are trying  19 to limit it for purposes of discovery, but they're  20 not trying to live with the consequences of that for  21 purposes of standing and other things in this  22 litigation by responding to our requests for  23 admissions as they should, given prior  24 representations they have made to this Court.  25 SPECIAL MASTER TORGERSON: Thank you.</p>

Page 14

1 Before I hear a response from the State of  
2 New Mexico, Mr. Bain, when -- I don't recall  
3 specifically, but I'm sure you must have filed a  
4 motion to dismiss. Was this issue addressed in your  
5 motion to dismiss about whether or not New Mexico  
6 Environmental Department was the proper party or had  
7 standing to sue on behalf of the State of  
8 New Mexico?

9 MR. BAIN: We have not done that, but we  
10 are anticipating doing that, and that might be the  
11 relief that we're seeking.

12 SPECIAL MASTER TORGERSON: All right.

13 Mr. Gilmour, do you want to respond on  
14 behalf of the State of New Mexico?

15 MR. GILMOUR: Yes, Your Honor. Can you  
16 hear me?

17 SPECIAL MASTER TORGERSON: Yes.

18 MR. GILMOUR: I need to apologize. I was  
19 having technical difficulties with my phone and had  
20 to drop off and redial in, so I missed the beginning  
21 of Mr. Bain's argument. But based upon our meet and  
22 confers and what I heard at the end, I think I heard  
23 it sufficiently to respond.

24 SPECIAL MASTER TORGERSON: Well, basically  
25 he said that this issue has consequences for

Page 16

1 Environment Department, then we can have that  
2 conversation; and again, that's a standing issue.  
3 But when we get to discovery obligations, which is  
4 why we're before Your Honor today, the issue that he  
5 does not like is the duality of the state's  
6 executive branches, meaning that the attorney  
7 general is independently elected from the governor.  
8 And in actions brought by the state attorney  
9 general, other state agencies are not parties to the  
10 action unless they're specifically requested to be  
11 part, which is what happened here. But the attorney  
12 general is the only entity that can bring an action  
13 on behalf of the entire state. You know, the  
14 attorney general is not subject to discipline or  
15 removal by the governor, and it brings the suit  
16 under its own authority.

17 So here, you know, the issue is that the  
18 United States wants the attorney general to be  
19 responsible and somehow be able to compel discovery  
20 obligations from another independently elected part  
21 of the executive authority, namely, the governor.  
22 And the attorney general simply does not have that  
23 ability. What it does have the ability to do, and  
24 what I have explained to the United States, is that  
25 the Environment Department, as a named party, will

Page 15

1 discovery and for standing, and they're upset that  
2 you only want to respond on behalf of the New Mexico  
3 Environment Department, and you'll try to get  
4 cooperation from other departments and agencies.  
5 And then he said the standing issue relates to  
6 whether or not the State, through the New Mexico  
7 Environment Department, can recover damages.

8 MR. GILMOUR: Yes, sir. And you have  
9 identified the exact issue, Your Honor, which is  
10 he's conflating discovery obligations with issues of  
11 standing. Standing is not at issue right now. What  
12 we're dealing with is discovery obligations and the  
13 complaint, despite Mr. Bain's recitation, is not  
14 just in the caption; it is identified in paragraph  
15 13 of the party section that the plaintiff, the  
16 State of New Mexico, on behalf of NMED has authority  
17 to bring a lawsuit and is the proper party.

18 Now, what's been difficult with the RFAs  
19 is that they're trying to (unintelligible) by saying  
20 the only -- admit that the only Government agency is  
21 the Environment Department. Well, that's not true.  
22 The State of New Mexico is the plaintiff as well as  
23 the Environment Department.

24 If he wants an admission that identifies  
25 both the State as an entirety, as well as the

Page 17

1 produce any and all information that is relevant and  
2 subject to the requests that is within its care,  
3 custody, or control because it is a party to this  
4 litigation.

5 We've also agreed to a stipulated order  
6 that Your Honor signed that we would go to a number  
7 of other agencies identified by the United States,  
8 including Taxation and Revenue, the Department of  
9 Tourism, the Department of Agriculture, the  
10 New Mexico Energy, Minerals and Natural Resources,  
11 Department of Abandoned Mine Land Program, and the  
12 Department of Game and Fish. Those were the  
13 entities they wanted us to go to. We have gone to  
14 them, we have collected information, we have  
15 produced information, and we are continuing to do  
16 so. But we can't compel them to do it. We are  
17 doing it by agreement between the attorney general  
18 and the secretaries of those agencies.

19 If the United States wants to compel those  
20 agencies, the United States needs to serve a  
21 subpoena upon those agencies. But what is  
22 frustrating is: Mr. Bain is making an issue where  
23 there isn't one. We are complying with all of our  
24 discovery obligations. We are producing everything  
25 from the Environment Department as we were required

Page 18

1 to do, and we've gone to these agencies and, through  
2 agreement, obtained and are producing and continuing  
3 to produce all the information that the United  
4 States requests.

5 So it's somewhat frustrating that we're  
6 here on a motion to compel when we're doing exactly  
7 what the United States wants. And as Your Honor  
8 stated, if they want to file a motion  
9 (unintelligible) on standing, that's a completely  
10 separate issue, and they're entitled to do that.  
11 But the way they have drafted these RFAs are to  
12 paint us into a corner, and as drafted, they are  
13 simply incorrect, and hence why they have been  
14 denied.

15 SPECIAL MASTER TORGERSON: Okay. So let  
16 me ask a follow-up question, because I'm trying to  
17 determine whether or not your position is  
18 inconsistent. Because you have now said in  
19 paragraph 13 of your most recent complaint that the  
20 State of New Mexico is a party as well as the  
21 New Mexico Environmental Department; and if the  
22 State of New Mexico is a party, wouldn't the State  
23 of New Mexico have to respond on behalf of these  
24 other entities or agencies or departments?

25 MR. GILMOUR: No, Your Honor, not unless

Page 20

1 deal with.

2 MR. GILMOUR: Yes, Your Honor, in a  
3 nutshell.

4 SPECIAL MASTER TORGERSON: All right.  
5 Mr. Bain.

6 MR. BAIN: Yes, Your Honor. And, you  
7 know, if what Mr. Gilmour is saying is when the  
8 State of New Mexico sues on its own behalf, it  
9 doesn't have an obligation to turn over relevant  
10 evidence from agencies within the state, I would  
11 like to see that authority because I just can't  
12 believe that's true, having represented the  
13 Government, the United States Government, for a very  
14 long time.

15 And I'll also reference Your Honor to the  
16 litigation in your district which is State of  
17 New Mexico versus United States, caption number  
18 6:19-CV-00178, and it's captioned State of  
19 New Mexico ex rel Hector Balderas, AG, and  
20 New Mexico Environmental Department. Each plaintiff  
21 is set out in a separate paragraph. Here there's  
22 one paragraph: New Mexico on behalf of New Mexico  
23 Environmental Department. Based on that, they have  
24 taken the position in this litigation, Mr. Gilmour  
25 has represented to you previously on October 31,

Page 19

1 the information is in the care, custody, or control  
2 of the attorney general.

3 SPECIAL MASTER TORGERSON: Okay. So let  
4 me ask you -- and then I'll give a chance for  
5 Mr. Bain to respond -- you have said, and we've  
6 discussed this before, that you have entered into  
7 this agreement and that the other departments and  
8 agencies have been cooperative, and you have been  
9 providing documents. Has there been an issue raised  
10 about whether or not the documents that you have  
11 provided are sufficient, or other discovery that may  
12 have been requested is not sufficient for some  
13 reason? Or is it just an issue of who to compel?

14 MR. GILMOUR: Your Honor, the only issue  
15 that I'm aware of -- and I defer to my colleagues,  
16 Ms. Rowenko and Mr. Homer, as they have been closer  
17 to it than I have. The only issue that I am aware  
18 of is related to the abandoned mine land program,  
19 which is being continued to meet and confer and  
20 discuss regarding.

21 SPECIAL MASTER TORGERSON: Okay. Well, so  
22 your position is: You have responded to the request  
23 for admission, and it is what it is; and if Mr. Bain  
24 wants to pursue this issue of standing, that's a  
25 separate issue from the discovery issues that I'm to

Page 21

1 2019, and November 13, 2019, that the case is being  
2 brought on behalf of the New Mexico Environmental  
3 Department. You asked him in November why did the  
4 State of New Mexico rather than the State of --  
5 New Mexico Environmental Department sue, and Gilmour  
6 responded, "The agency is the one identified by the  
7 State to be in charge of mediation, restoration, and  
8 any and all damages that flow from that."

9 So we will file a motion to dismiss based  
10 on standing. But if it comes out that the State of  
11 New Mexico somehow is a party, they have been  
12 operating under, my opinion, a false basis for  
13 responding to requests for discovery, that only this  
14 one agency can be compelled to produce documents to  
15 us, and that all other information from the State  
16 has to be produced through some type of memorandum  
17 of understanding or agreement. And as I mentioned  
18 before, we're trying to get information now from  
19 University professors that -- you know, we're trying  
20 to work it out with them, but it's not something  
21 that they're willing or think that they have an  
22 obligation to produce because New Mexico is a party  
23 in this case.

24 SPECIAL MASTER TORGERSON: All right.  
25 Well, I'm not familiar with --

1 UNITED STATES OF AMERICA  
2 STATE OF NEW MEXICO  
3

4 REPORTER'S CERTIFICATE

5 I, Mary Abernathy Seal, RDR, CRR, CCR, do  
6 hereby certify that the foregoing pages constitute a  
7 true transcript of proceedings had before the said  
8 Court held in the City of Albuquerque, New Mexico,  
9 in the matter therein stated.

10 In testimony whereof, I have hereunto set my  
11 hand on this 27th day of June, 2020.  
12

13 *Mary A. Seal*

14 Mary Abernathy Seal, RDR, CRR, CCR  
15 BEAN & ASSOCIATES, INC.  
16 NM Certified Court Reporter #69  
17 License expires: 12/31/20

18 Date taken: June 26, 2020  
19  
20  
21  
22  
23  
24  
25

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 820-6349

**BEAN & ASSOCIATES, Inc.**  
PROFESSIONAL COURT  
REPORTING SERVICE

MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com